IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3873 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ABDULRASHID @ BABU KARIMBHAI LOHIYA

Versus

STATE OF GUJARAT, THROUGH SECRETARY

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Appearance:

MR MM TIRMIZI for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/07/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 1-3-2000 passed by the District Magistrate, Bhavnagar and he has been branded as a dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. Learned advocate for the petitioner has mainly argued that statements of two independent witnesses have been recorded by one Shri T.K.Patel on 6-2-2000 and 7-2-2000 respectively and those statements have been verified by Dy.S.P., Mr.Parmar on 1-3-2000. He has also drawn my attention towards the grounds at page No.22 of the petition which is internal page No.3 wherein it is specifically mentioned that he has personally called the person whose statements have been recorded by Mr.Patel and he himself has verified the same. But the facts are otherwise according to the learned advocate for the petitioner.

4. I have also gone through the statements. It appears that verification of the witnesses have been done by Dy.S.P., Mr.Parmar and it is a contradictory order passed by the detaining authority because though he has not verified those statements, he has specifically mentioned in the ground that he has personally called the witnesses and verified their statements. In view of the above fact situation, continued detention of the petitioner is bad and, therefore, same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 3-1-2000 passed by the District Magistrate, Ahmedabad against the detenu is hereby quashed. The detenu-Nagabhai Chaturbhai Vaghari is set at liberty forthwith, if not required to be detained in

any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

RADHAN/